(1) (F 100) Single Bench (3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 4282 2004,

PETITIONER:

Shekhar Sinha
S/O- Govardhan Sinha
Aged about 37 years,
Constable no. 134
P.S. - City Kotwali
Distt- Dhamtari (C.G.)

P.R. No. 4225/04 Presented by Shri S.S. Mishra dated 4/11/04

VERSUS

RESPONDENTS:-

1) State of Chhattisgarh
Through: Secretary,
Department of Home
(Mantralaya)
D.K.S. Bhawan, Raipur (C.G.)

2) Deputy Police Inspector General
(Admin.)
Police Head Quarter Raipur (C.G.)

3) Superintendent of Police
Dhamtari
Distt-Dhamtari (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUENCE OF APPROPRIATE WRIT (S) ORDER (S) DIRECTIONS (S).

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(51)

मामला क्रमांक W.P.No. 4282/2004 / सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	03.03.2005 Shri Virendra Sharma, learned counsel for the petitioner. Shri U.N.S. Deo, Government Advocate, for the State/ respondents no.1 to 3. Heard. The petitioner has challenged the validity of transfer order dated 02.8.2004 (Annexure P-4) by which he has been transferred from Dhamtari to Dantewara, South Bastar (C.G). Learned counsel for the petitioner submits that Dantewada is a Naxalite infested area and the petitioner has already worked in that area at Beejapur for about 2½ years, therefore, he should not have been transferred again to the Naxalite area. He also submits that the impugned transfer order is an outcome of malafide as one Sarpanch Komal Yadu is having inimical relations with the family members of the petitioner and the transfer has been effected at the instance of the said Sarpanch. He draws the attention of this Court to the Medical Certificate (Annexure P-5) and submits that the petitioner was medically examined by the Board and it has	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 4282/2004 सन् 200

(52)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

been mentioned in this document that due to some injury on the right knee, the petitioner is not fit for exercises.

Return has been filed by the State. State has denied the contentions of the petitioner. It has been pointed out that the order of transfer has been issued in a normal way on administrative grounds. About the report of medical Board it has been contended that this certificate issued by the Board does not form part of the service records of the petitioner, therefore, no comments can be made on the same.

I have heard learned counsel at length and have perused the records of the case.

In the series of judgments, the Apex Court has held that the transfer is an incidence of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. Referring to the decisions reported in ***1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray -Vs- State of Orissa)*** and ***AIR 1993 SC 2444 (Union of India -v- S.L. Abbas)***, the apex Court has laid down

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 4282/2004 सन् 200

(53)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

this law in the matter of ***Kendriya Vidyalaya Sangathan –Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563.***

The above series of judgments pronounced by the apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer passed by the competent authority. If the jurisdiction and the authority is not challenged nor there is any challenge on the ground of violation of any statutory rules then unless the malafide, arbitrariness or extraneous considerations are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be purely on the administrative exigency will not be accepted to be a normal transfer.

Learned counsel for the petitioner submits that since the said Sarpanch is having inimical relations with the family members of the petitioner, therefore, the order of transfer has

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 4282/2004 सन् 200

(54)

आदेश पत्रक (पूर्वानुबद्ध)

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been effected. The said Sarpanch has neither been made as a party respondent in this case nor, any evidence in relation to this fact has been brought on record. It has not been established on record that the transfer has been effected at the instance of the said Sarpanch. Through the allegations are made against him, but unless he is made party in this case and reply is sought from him, no comments can be made on these points. I am not inclined to accept the contention that the aforesaid transfer has been effected at the instance of the said Sarpanch namely Komal Yadu.

About the arguments advanced on Annexure P-5 which is a medical certificate, it seems that the petitioner has been declared unfit for exercise etc. If a person working in force is posted in a particular area and is assigned with field duty, certainly he is required to undertake exercise or physical training to perform his duties. Since the certificate has not been made part of the service record of the petitioner, this point has not been considered by the authority while passing the order of transfer of the petitioner.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

53

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Looking to the facts and circumstances of the case, in the opinion of this Court, it would be just and proper if the petition is disposed of with a direction that the petitioner may file a detailed representation before the concerned authority alongwith a copy of this order and that of writ petition highlighting the points of medical certificate annexed as Annexure P-5 and on such representation being filed, the concerned authority shall consider and decide the same within the stipulated time, in accordance with law. Accordingly, it is directed that the petitioner, if so advised, may file a representation alongwith a copy of this order and copy of writ petition particularly *Annexure P-5* before the authority concerned within a period of 15 days from today and on such representation being filed, the concerned authority shall examine the question of suitability of the petitioner for posting in the field area on the face of recommendations made by the Medical Board vide Document Annexure P-5.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 4282/2009 सन् 200

(56)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-6- The said representation shall be decided within a period of one month from the date of its filing and the decision taken by the authority shall be communicated to the petitioner accordingly. The petition stands finally disposed of with the aforesaid direction. C.C. as per rules. Sd/- Sunil Kumar Sinha Judge	

(Roo)